

intercompany receivable. Accordingly, S's basis in Asset 1 is reduced by the full attribute reduction amount.

*Example 4. Use of a partnership to reduce net stock loss.* (i) *Facts.* M owns all ten outstanding shares of S common stock, one share (Share 1) has a basis of \$0, and one share (Share 2) has a basis of \$160. S has an aggregate inside loss of \$80. In one transaction and with a view to mitigating a reduction in S's attributes, M contributes Share 1 to a partnership, recognizing no gain or loss, and sells Share 2 for \$80. M's contribution of Share 1 to the partnership is a transfer, but the share is not a loss share and so the transfer is not subject to this section. M's sale of Share 2 is a transfer of a loss share and is therefore subject to this section.

(ii) *Analysis.* Although M's transfer of Share 2 is subject to this section, there is no adjustment under paragraph (b) of this section because there are no investment adjustments that have been applied to the shares. Accordingly, after the application of paragraph (b) of this section, M's sale of Share 2 is still a transfer of a loss share and therefore subject to paragraph (c) of this section. There is no adjustment under paragraph (c) of this section because the net positive adjustment is \$0. See paragraph (c)(3) of this section. Accordingly, after the application of paragraph (c) of this section, M's sale of Share 2 is still a transfer of loss shares and therefore subject to paragraph (d) of this section. Under paragraph (d) of this section, the net stock loss would be determined to be \$0, the excess of the \$160 aggregate basis in all of the transferred shares over the \$160 aggregate value of those shares. S's attribute reduction amount would be determined to be \$0, the lesser of the \$0 net stock loss and S's \$80 aggregate inside loss. Thus, there would be no reduction of attributes under this paragraph (d) of this section. However, because M acted with a view to reducing the attribute reduction amount by transferring a gain share to a partnership while avoiding the recognition of the gain on the share, this section is applied without regard to the transfer of the gain share. Accordingly, the net stock loss is determined to be \$80, and the attribute reduction amount is determined to be \$80.

*Example 5. Stuffing gain asset.* (i) *Facts.* M owns the sole outstanding share of S stock (Share 1) with a basis of \$100. S owns Asset 1 with a basis of \$100 and a value of \$20. With a view to avoid the purposes of this section, M transfers Asset 2 with a basis of \$0 and a value of \$80 to S in exchange for four additional shares of S stock (Share 2 through Share 5) in a transaction to which section 351 applies. M later sells Share 1 to X for \$20. M's sale of Share 1 is a transfer of a loss share and therefore subject to this section.

(ii) *Analysis.* Although M's transfer of the Share 1 is subject to this section, there is no

adjustment under paragraph (b) of this section because no investment adjustments have been applied to the basis of any S shares. Thus, after the application of paragraph (b) of this section, M's sale of the S share is still a transfer of a loss share and therefore subject to paragraph (c) of this section. There is no adjustment under paragraph (c) of this section because the net positive adjustment is \$0. Accordingly, after the application of paragraph (c) of this section, M's sale of the S share is still a transfer of a loss share and therefore subject to paragraph (d) of this section. Under paragraph (d) of this section, S's attribute reduction amount would be \$0, the lesser of the \$80 net stock loss and S's \$0 aggregate inside loss (\$100 of attributes does not exceed the \$100 value of all of the S shares). However, because M transferred Asset 2 to S with a view to avoid the purposes of this section, the application of this section to M's transfer of Share 1 is made without regard to the transfer of Asset 2. Accordingly, under paragraph (d) of this section, S's attribute reduction amount is \$80, the lesser of the \$80 net stock loss and S's \$80 aggregate inside loss (computed without regard to Asset 2). S's basis in Asset 1 is therefore reduced by \$80, from \$100 to \$20, under paragraph (d) of this section.

(iii) *Transfer of all S shares.* Assume the same facts as in paragraph (i) of this Example 5, except that M sells all five S shares to X, recognizing both the gain and the loss on the S shares. The transfer of Share 1 is still a transfer of a loss share and therefore subject to this section. However, because all the shares are transferred, the group's income is clearly reflected. Therefore, the purposes of this section are not avoided and this section applies without modification. S's attribute reduction amount is \$0, the lesser of the \$0 net stock loss and S's \$0 aggregate inside loss.

(h) *Effective/applicability date.* This section applies to transfers of shares of subsidiary stock on or after September 17, 2008 unless the transfer was made pursuant to a binding agreement that was in effect prior to September 17, 2008 and at all times thereafter. For transfers of shares of subsidiary stock that are not subject to this section, see §§ 1.337(d)-2 and 1.1502-35.

[T.D. 9424, 73 FR 53952, Sept. 17, 2008, as amended at 73 FR 62204, Oct. 20, 2008; 73 FR 65982, Nov. 6, 2008]

#### SPECIAL TAXES AND TAXPAYERS

##### § 1.1502-42 Mutual savings banks, etc.

(a) *In general.* This section applies to mutual savings banks and other institutions described in section 593(a).

(b) *Total deposits.* In computing for purposes of section 593(b)(1)(B)(ii) total deposits or withdrawable accounts at the close of the taxable year, the total deposits or withdrawable accounts of other members shall be excluded.

(c) *Taxable income; taxable years for which the due date (without extensions) for filing returns is before March 15, 1983.* For taxable years for which the due date (without extensions) for filing returns is before March 15, 1983, a member's taxable income for purposes of section 593(b)(2) is determined under § 1.1502-27(b) (computed without regard to any deduction under section 593(b)(2)). In addition, for taxable years beginning after July 11, 1969, taxable income as computed under the preceding sentence is subject to the adjustments provided in section 593(b)(2)(E). See § 1.593-6A(b)(5).

(d) *Taxable income; taxable years for which the due date (without extensions) for filing returns is after March 14, 1983—*(1) *In general.* For a taxable year for which the due date (without extensions) for filing returns is after March 14, 1983, a thrift's taxable income for purposes of section 593(b)(2) is its tentative taxable income (as defined in paragraph (e)(1) of this section).

(2) *Definitions.* For purposes of this section:

(i) A *thrift* is a member described in section 593(a).

(ii) A *nonthrift* is a member that is not a thrift.

(e) *Tentative taxable income (or loss)—*(1) *Thrift.* For purposes of this section, a thrift's tentative taxable income (or loss) is its separate taxable income (determined under § 1.1502-12 without paragraph (q) thereof and without any deduction under section 593(b)), subject to the following adjustments in the following order:

(i) The adjustments described in paragraph (e)(3) of this section;

(ii) The adjustments described in section 593(b)(2)(E) for those thrifts with separate taxable income greater than zero (determined after the adjustments under paragraph (e)(3) of this section); and

(iii) The adjustments described in paragraph (f) of this section.

(2) *Nonthrift.* For purposes of this section, a nonthrift's tentative taxable in-

come (or loss) is its separate taxable income (determined under § 1.1502-12), adjusted for the portion of the consolidated net operating loss deduction attributable to the member, the portion of the consolidated net capital loss carryover or carryback attributable to the member, and further adjusted as described in paragraph (e)(3) of this section.

(3) *Adjustments for all members.* For each member, the following adjustments taken into account in the computation of consolidated taxable income are included in determining its tentative taxable income (or loss) in order to adjust separate taxable income of the member to take into account certain consolidated items:

(i) The portions of the consolidated charitable contributions deduction and the consolidated dividends received deduction attributable to the member.

(ii) The member's capital gain net income, determined without any net capital loss carryover or carryback attributable to the member.

(iii) The member's net capital loss and section 1231 net loss, reduced by the portion of the consolidated net capital loss attributable to the member.

(f) *Adjustments for thrifts—*(1) *Reductions.* A thrift's separate taxable income (as adjusted under paragraph (e)(3) of this section) is reduced (but not below zero) by losses of thrifts and to the extent attributable to functionally related activities, losses of a nonthrift. Certain operating rules for determining the amount of the reductions are provided in paragraph (f)(4) of this section. The reductions are made in the following amounts in the following order:

(i) The thrift's allocable share (as determined under paragraph (h)(2) of this section) of another thrift's tentative taxable loss. That tentative taxable loss is determined by including a deduction under section 593(b) (other than paragraph (2) thereof) for the year in which the loss arises.

(ii) The thrift's allocable share (as determined under paragraph (h)(3) of this section) of the portion of the consolidated net operating loss deduction attributable to it or another thrift. That consolidated net operating loss deduction is determined by including a

deduction under section 593(b) (other than paragraph (2) thereof) for the year in which the loss arose. The portion of a consolidated net operating loss deduction attributable to another thrift is computed by excluding losses arising in taxable years for which the due date (without extensions) for filing returns is before March 15, 1983.

(iii) The thrift's allocable share (as determined under paragraph (h)(4) of this section) of the loss attributable to functionally related activities of a nonthrift (as determined under paragraph (g) of this section). For a rule netting that share against certain income attributable to functionally related activities of that nonthrift, see paragraph (f)(4)(iv) of this section.

(iv) The thrift's allocable share (as determined under paragraph (h)(3) of this section) of the portion of the consolidated net operating loss deduction attributable to functionally related activities of a nonthrift (as determined under paragraph (h)(5) of this section). That consolidated net operating loss deduction is determined by excluding losses arising in taxable years for which the due date (without extensions) for filing returns is before March 15, 1983. For a rule netting that share against certain income attributable to functionally related activities of that nonthrift, see paragraph (f)(4)(iv) of this section.

(2) *Increases.* (i) A thrift's separate taxable income (as adjusted under paragraphs (e)(3) and (f)(1) of this section) is increased in a subsequent consolidated return year to restore reductions made in a prior consolidated return year to a thrift's separate taxable income by reason of losses of a nonthrift. This increase is the amount of the thrift's allocable share (as determined under paragraph (h)(6) of this section) of the income attributable to functionally related activities of a nonthrift in a consolidated return year and is made only in that year. This increase is made only if both the thrift and the nonthrift were members of the group in the consolidated return years in which both the reduction and increase are made.

(ii) This subdivision (ii) limits the increases to a thrift's separate taxable income to assure that income of a par-

ticular nonthrift is used to restore reductions of a thrift only to the extent that such nonthrift's losses reduced the thrift's income. Therefore, as of the end of a consolidated return year, the cumulative increases to a thrift's tentative taxable income (by reason of income attributable to functionally related activities of a nonthrift) may not exceed the cumulative reductions to the thrift's separate taxable income made (by reason of the nonthrift's functionally related activities) under paragraph (f)(1) (iii) and (iv) of this section in the current and all prior consolidated return years during which both the thrift institution and the nonthrift institution were members of the group.

(iii) For a netting rule, see paragraph (f)(4)(iv) of this section.

(3) *Special Rule.* (i) If a carryback to a thrift's separate taxable income diminishes the reduction to a thrift's separate taxable income for a prior consolidated return year otherwise required by paragraph (f)(1) (iii) or (iv) of this section, then any increases to a thrift's separate taxable income under paragraph (f)(2) of this section for an intervening consolidated return year must be recomputed to take into account the effect of such carryback. Thus, if a net operating loss attributable to a thrift is carried back and completely offsets the thrift's separate taxable income (before the reductions under paragraph (f)(1) (iii) or (iv) of this section), any increase to the thrift's separate taxable income under paragraph (f)(2) of this section (attributable to a reduction in the year to which the loss is carried) for an intervening consolidated return year will be eliminated. The recomputation required by this subparagraph (3) must be reflected on an amended return for the intervening consolidated return year for which the increase was previously reported. See example (2) in paragraph (j) of this section.

(ii) If a deficiency for an intervening consolidated return year results from the application of paragraph (f)(3)(i) of this section with respect to an item to which section 6501(h) applies, the deficiency may be assessed at any time within the period described in section 6501(h).

(iii) For purposes of chapter 67 of the Code (relating to interest), the last date prescribed for payment of any tax owed as a result of the application of paragraph (f)(3)(i) of this section is deemed to be the last day of the taxable year for which the item carried back arose.

(4) *Operating rules.* For purposes of paragraphs (d) through (j) of this section:

(i) The portion of a consolidated net operating loss deduction attributable to a member is determined as follows:

(A) First, determine under §§1.1502-21(b) (or §1.1502-79A(a)(3), as appropriate) the portion of each consolidated net operating loss attributable to the member for the particular year in which the loss arose.

(B) Second, apply the anti-double-counting rule in paragraph (h)(3)(iii) of this section so as not to take the same loss into account twice.

(C) Finally, apply the loss absorption limit in paragraph (f)(4)(iii) of this section to the total amount of the consolidated net operating loss deduction from a particular loss year.

(ii) Capital loss carryovers and carrybacks shall be taken into account in a manner consistent with the principles of paragraphs (d) through (j) of this section.

(iii) This subdivision (iii) prescribes a loss absorption limit. The total amount of the consolidated net operating loss deduction from a given year (loss year) taken into account as reductions under paragraph (f)(1) of this section for another year (absorption year) shall not exceed the amount of the consolidated net operating loss deduction attributable to the loss year absorbed in computing consolidated taxable income for the absorption year. For this purpose, consolidated taxable income for the absorption year shall include a deduction under section 593(b) (other than paragraph (2) thereof) for each thrift member.

(iv) This subdivision (iv) prescribes a rule for netting in certain cases income attributable to functionally related activities of a nonthrift in a consolidated return year ("income year") against losses attributable to functionally related activities of that nonthrift which arise in a consolidated return year

("loss year"). That nonthrift's income is netted against the portion of that nonthrift's loss which would otherwise be applied in a consolidated return year ("reduction year") under paragraph (f)(1) (iii) or (iv) of this section to reduce a thrift's tentative taxable income, but:

(A) Only if the income year is not later than the loss year and the reduction year, and

(B) Only to the extent the income had not previously been taken into account under paragraph (f)(2) of this section or this subdivision (iv) as of the close of the later of the loss year and the reduction year.

(g) *Income (or loss) attributable to functionally related activities of a nonthrift—*

(1) *In general.* For purposes of this section, the income (or loss) attributable to functionally related activities of a nonthrift is the income (or loss) of the nonthrift:

(i) Attributable to the provision of assets or the rendition of services to a thrift (such as the leasing of office space or providing computer or financial services), or

(ii) Derived from the assets described in section 7701(a)(19)(C) (iii) through (x), but only if such assets comprise 5 percent or more of the gross assets of the nonthrift.

(2) *Amount of income (or loss).* The amount of income (or loss) from such activities is the excess of (i) gross income from such activities over (ii) the deductions of the nonthrift allocable and apportionable to that gross income under the principles of §1.861-8. The loss attributable to functionally related activities of a nonthrift is the excess (if any) of such deductions over such gross income. That loss, however, may not exceed the amount of the tentative taxable loss of that nonthrift (determined by excluding losses arising in taxable years for which the due date (without extensions) for filing returns is before March 15, 1983).

(h) *Allocation of income and losses—*(1) *In general.* Paragraphs (h)(2) through (5) of this section provides rules for allocating different losses among thrifts that have tentative taxable income greater than zero. Generally, these allocations are made in the order listed in paragraph (f)(1) of this section and

are based upon the relative tentative taxable income of the thrifts to which the particular loss is allocated. For purposes of each allocation under a subdivision of such paragraph (f)(1), the tentative taxable income of the thrifts used in making this allocation is reduced by the thrift's allocable share of losses allocated to the thrift under a prior subdivision of such paragraph (f)(1). Accordingly, for purposes of this paragraph (h), tentative taxable income is determined without regard to paragraph (f) of this section, except as otherwise provided. Paragraph (h)(6) of this section provides rules for allocating income attributable to functionally related activities of a nonthrift based upon the relative reductions to thrift income made on account of that nonthrift.

(2) *Allocation of tentative taxable loss of other thrifts.* For purposes of paragraph (f)(1)(i) of this section, a thrift's allocable share of another thrift's tentative taxable loss is the loss multiplied by a fraction. The numerator of the fraction is the tentative taxable income (if greater than zero) of the thrift, and the denominator is the aggregate of such tentative taxable income of each thrift.

(3) *Allocation of portions of a consolidated net operating loss deduction.* (i) For purposes of paragraph (f)(1)(ii) of this section, a first thrift's allocable share of the portion of the consolidated net operating loss deduction attributable to another thrift is determined under paragraph (h)(2) of this section as if that portion were a tentative taxable loss of that other thrift and by computing tentative taxable income under such paragraph (h)(2) by taking into account paragraph (f)(1)(i) of this section. A thrift's allocable share of the portion of the consolidated net operating loss deduction attributable to that thrift is equal to that entire portion.

(ii) For purposes of paragraph (f)(1)(iv) of this section, a thrift's allocable share of the portion of a consolidated net operating loss deduction attributable to functionally related activities of a nonthrift (determined under paragraph (h)(5) of this section) is determined under paragraph (h)(4) of this section as if that portion were a

loss attributable to functionally related activities of the nonthrift and by computing tentative taxable income under such paragraph (h)(4) by taking into account paragraph (f)(1) (i), (ii), and (iii) of this section.

(iii) This subdivision (iii) prevents the "double-counting" of losses. The reduction to the tentative taxable income of a thrift is diminished to the extent the loss that gave rise to the reduction has previously been taken into account in reducing a thrift's tentative taxable income. Thus, any loss taken into account as a reduction to a thrift's separate taxable income under any subdivision of paragraph (f)(1) of this section shall be reduced (but not below zero) to the extent taken into account:

(A) In a prior consolidated return year under any subdivision of such paragraph (f)(1) or

(B) In the current consolidated return year under a previous subdivision of such paragraph (f)(1).

(4) *Allocation of loss attributable to functionally related activities of a nonthrift.* For purposes of paragraph (f)(1)(iii) of this section, a thrift's allocable share of a loss attributable to functionally related activities of a nonthrift is determined by multiplying the loss by a fraction. The numerator of the fraction is the tentative taxable income (if greater than zero) of the thrift (taking into account paragraph (f)(1) (i) and (ii) of this section) and the denominator is the aggregate of such tentative taxable income (so determined) of each thrift.

(5) *Portion of the consolidated net operating loss deduction attributable to functionally related activities of a particular nonthrift.* The portion of the consolidated net operating loss deduction attributable to functionally related activities of a particular nonthrift is the lesser of the following two amounts:

(i) The portion of the consolidated net operating loss deduction attributable to that nonthrift.

(ii) The aggregate of the losses attributable to functionally related activities of that nonthrift for the taxable years in which the consolidated net operating loss deduction arose.

(6) *Allocation of income attributable to functionally related activities of a non-thrift.* For purposes of paragraph (f)(2) of this section, a thrift institution's allocable share of the income attributable to functionally related activities of a nonthrift is determined by multiplying that income by a fraction. The numerator of the fraction is the amount of the cumulative reductions referred to in paragraph (f)(2)(ii) of this section (minus the cumulative increases under paragraph (f)(2) of this section) made on account of that nonthrift for the thrift and the denominator is the sum of such cumulative reductions (minus such cumulative increases) made on account of that nonthrift for all thrifts.

(7) *Proper accounting.* The provisions of section 482 apply in determining a thrift institution's tentative taxable income, and in determining the gross income and deductions attributable to functionally related activities. For example, an expense such as the salary of an individual who performs services for both a thrift and a nonthrift must be allocated in a manner that fairly reflects the value of the services rendered to each.

(i) [Reserved]

(j) *Examples.* The provisions of this section may be illustrated by the following examples. In each example the letter "T" for a member denotes a thrift and the letters "NT" denote a nonthrift. Also, in each example, a thrift loss includes a bad debt deduction under section 593(b) (other than paragraph (2) thereof) for such year and a thrift with income would have such a bad debt deduction of zero.

*Example 1.* (a) In 1983, corporations T1, T2, NT1, and NT2 are formed. These corporations constitute an affiliated group that files a consolidated return on the basis of a calendar year. For 1983, 1984, and 1985, the tentative taxable income (or loss) of each member (before the application of paragraph (f) of this section) is as follows:

	1983	1984	1985
NT1 .....	\$(60)	\$(140)	\$15
T1 .....	1,000	500	750
NT2 .....	(90)	(220)	150
T2 .....	(300)	400	250

In 1983, NT1, in addition to its other business activities, acted as a collection agency for T1. Deductions attributable to those ac-

tivities exceeded gross income attributable to those activities by \$70. NT1's other activities generated a \$10 gain. In 1984 and 1985, NT1 acted as a collection agency for T1 as its sole activity.

(b) The tentative taxable incomes of T1 and T2 for 1983 (determined under paragraph (e) of this section) as of the close of that year are adjusted by paragraph (f) of this section as follows:

(i) T1's tentative taxable income:			
T1's tentative taxable income (before the application of paragraph (f) of this section) .....			\$1,000
Less:			
T2's tentative taxable loss .....	\$300		
NT1's functionally related loss (limited by NT1's overall loss) .....	60	360	
T1's tentative taxable income for 1983 .....			640

(ii) T2's tentative taxable income for 1983 is zero.

(c) The tentative taxable incomes of T1 and T2 for 1984 (determined under paragraph (e) of this section as of the close of that year) are adjusted by paragraph (f) of this section as follows:

(i) T1's tentative taxable income:			
T1's tentative taxable income (before the application of paragraph (f) of this section) .....			\$500
Less:			
T1's allocable portion of NT1's functionally related loss (140×500/(500+400)) .....		78	
T1's tentative taxable income for 1984 .....			422

(ii) T2's tentative taxable income:			
T2's tentative taxable income (before the application of paragraph (f) of this section) .....			400
Less:			
T2's allocable portion of NT1's functionally related loss (140×400/(500+400)) .....		62	
T2's tentative taxable income for 1984 .....			338

(d) For 1985, the amount under paragraph (f) (2) of this section for both T1 and T2 is \$15 (NT1's tentative taxable income from functionally related activities for 1985). For 1983 and 1984, T1's tentative taxable income was reduced by a total of \$138 (*i.e.*, \$60 + \$78) due to NT1's losses from functionally related activities. For 1984, T2's tentative taxable income was reduced by \$62 due to those losses. Accordingly, under paragraph (f)(2) of this section, T1's tentative taxable income for 1983 is increased by \$10 (*i.e.*, \$15×\$138/(\$138+\$62)) and T2's tentative taxable income is increased by \$5 (*i.e.*, \$15×\$62/(\$138+\$62)).

*Example 2.* (a) In 1983, corporations T, NT1, and NT2 are formed. These corporations constitute an affiliated group. NT2 provides computer services to T as its sole activity. For the calendar years 1983, 1984, and 1985, the group files a consolidated return. The tentative taxable income of each member (before the application of paragraph (f) of this section) is as follows:

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	1983	1984	1985
T .....	\$100	\$0	\$(200)
NT1 .....	200	0	100
NT2 .....	(20)	20	0

(b) Under paragraph (f)(1) of this section, T's tentative taxable income for 1983 (determined at the close of that year) is reduced to \$80 (*i.e.*, \$100 less NT2's \$20 loss). For 1984, under paragraph (f)(2) of this section, T's tentative taxable income is increased by \$20. For 1985, the consolidated net operating loss of \$100 (all of which is attributable to T) is carried back to 1983. That \$100 carryback is not limited by paragraph (f)(4)(iii) of this section, since consolidated taxable income for 1983 available for absorption after a bad debt deduction of \$0 under section 593(b) (other than paragraph (2) thereof) for that year is \$280. Accordingly, under paragraph (f)(1)(ii) of this section, T's tentative taxable income is reduced by the full \$100, which is taken into account before the previous reduction of T's tentative taxable income under paragraph (f)(1)(iii) of this section. In addition, under paragraph (f)(3)(i) of this section, the group must file an amended return for 1984 to eliminate the increase to T's bad debt deduction for 1984 by reason of the consolidated net operating loss carryback to 1983.

*Example 3.* (a) T and NT are formed in 1983 and are the only members of an affiliated group filing a consolidated return on a calendar year basis. NT provided computer services to T as its sole activity. For 1983, 1984, and 1985, the tentative taxable income of T and NT (before the application of paragraph (f) of this section) is as follows:

	1983	1984	1985
T .....	\$100	\$0	\$0
NT .....	0	40	(40)

(b) At the close of 1983, T's tentative taxable income is \$100. For 1985, however, the group has a consolidated net operating loss of \$40, all of which is attributable to NT's functionally related activities and which is carried back to 1983. However, T's tentative taxable income for 1983 is not reduced under paragraph (f)(1)(iv) of this section, since, under paragraph (f)(4)(iv) of this section, NT's 1984 income attributable to functionally related activities of \$40 is netted against that \$40 carryback.

*Example 4.* (a) In 1983, corporations T1, T2, NT1, and NT2 are formed. For calendar years 1983, 1984, and 1985, the affiliated group consisting of T1, T2, NT1, and NT2 filed a consolidated return. NT1 provided computer services to T1 as its sole activity. The tentative taxable income of each member (before the application of paragraph (f) of this section) is as follows:

	1983	1984	1985
T1 .....	(50)	100	30
T2 .....	(50)	(80)	(25)
NT1 .....	(50)	(40)	(99)
NT2 .....	120	30	100

(b) For 1983, the group has a consolidated net operating loss of \$30, apportioned \$10 each to T1, T2, and NT1 under §1.1502-79A(a)(3). For 1984, the only thrift with tentative taxable income greater than zero (before applying paragraph (f) of this section) is T1. That tentative taxable income of \$100 is first reduced to \$20 by T2's \$80 1984 loss under paragraph (f)(1)(i) of this section. Next, T1's remaining tentative taxable income of \$20 is reduced to \$10 by the portions attributable to T1 and T2 of the 1983 consolidated net operating loss carryover to 1984 under paragraph (f)(1)(ii) of this section. The sum of those portions is limited to \$10 (*i.e.*, \$5 each) by paragraph (f)(4)(iii) of this section because 1984 consolidated taxable income available for absorption after a bad debt deduction under section 593(b) (other than paragraph (2) thereof) for each thrift member for that year is \$10. For that reason, paragraph (f)(4)(iii) of this section also prevents any further portion of that carryover from being taken into account in 1984 as a reduction under paragraph (f)(1) of this section. T1's remaining tentative taxable income of \$10 is reduced to zero, under paragraph (f)(1)(iii) of this section, by NT1's 1984 tentative taxable loss.

(c) For 1985, the only thrift with tentative taxable income greater than zero (before applying paragraph (f) of this section) is T1. T1's tentative taxable income for 1985 of \$30 is reduced to \$5 by T2's 1985 loss of \$25 under paragraph (f)(1)(i) of this section. Next, the portions attributable to T1 and T2 of the consolidated net operating loss carryover from 1983 to 1985 for purposes of paragraph (f)(1)(ii) of this section must be determined. That determination is made without applying the rules for loss absorption in computing consolidated taxable income under §1.1502-21A(b)(3). Those portions are instead determined in 3 steps under paragraph (f)(4)(i) of this section. The first of those steps is to determine each of T1's and T2's attributable portions of the 1983 consolidated net operating loss which under §1.1502-79A(a)(3) is \$10 or \$20 for both thrifts. The second of those steps is to apply the anti-double counting rule under paragraph (h)(3)(iii) of this section to reduce that \$20 amount by the \$10 total of the two \$5 portions attributable to T1 and T2 of the consolidated net operating loss carryover from 1983 to 1984 taken into account as reductions to T1's tentative taxable income for 1984 under paragraph (f)(1)(ii) of this section. That leaves a \$10

total amount available to be taken into account as reductions to T1's remaining tentative taxable income of \$5 for 1985 under paragraph (f)(1)(ii) of this section. Under the third of those steps that \$10 amount, however, is limited, under the loss absorption limit of paragraph (f)(4)(iii) of this section, to the \$6 of the 1983 consolidated net operating loss carryover to 1985 which is absorbed in computing consolidated taxable income for 1985 since 1985 consolidated taxable income available for absorption after a bad debt deduction under section 593(b) (other than paragraph (2) thereof) for that year is \$6 (i.e., \$30+\$100-\$99-\$25). Because separate taxable income cannot be reduced below zero under paragraph (f)(1) of this section, T1's remaining tentative taxable income of \$5 is thus reduced to zero by the portions attributable to T1 and T2, respectively, of the consolidated net operating loss carryover from 1983 to 1985 under paragraph (f)(1)(ii) of this section.

(Sec. 1502, 7805, Internal Revenue Code of 1954 (68A Stat. 367 and 917; 26 U.S.C. 1502 and 7805))

[T.D. 7637, 44 FR 46841, Aug. 9, 1979, as amended by T.D. 7815, 47 FR 11516, Mar. 17, 1982; T.D. 7876, 48 FR 11258, Mar. 17, 1983; 48 FR 13165, Mar. 30, 1983; T.D. 8677, 61 FR 33324, June 27, 1996; T.D. 8823, 64 FR 36100, July 2, 1999]

**§ 1.1502-43 Consolidated accumulated earnings tax.**

(a) *Group subject to tax*—(1) *General rule.* For a group filing a consolidated return for the taxable year, the accumulated earnings tax under section 531 is imposed on consolidated accumulated taxable income (as defined in paragraph (b) of this section). This tax applies to any group that is formed or availed of to avoid or prevent the imposition of the individual income tax on the shareholders of either any of its members or any other corporation by permitting earnings and profits to accumulate instead of dividing or distributing them. Section 531 and this section do not apply to a group that is treated as a “personal holding company” under section 542(a)(1) as a result of the application of section 542(b)(1). Special rules are provided in this section for other groups which include one or more personal holding companies.

(2) *Evidence of purpose to avoid income tax.* (i) Under section 533(a), the fact that the group's earnings and profits are permitted to accumulate beyond

the reasonable needs of its business is determinative of the purpose to avoid the income tax with respect to shareholders, unless the group by the preponderance of the evidence proves to the contrary.

(ii) The fact that a group is a mere holding or investment group is prima facie evidence of the group's purpose to avoid the income tax with respect to the shareholders. The activities of a member which is a personal holding company are not taken into account in determining if the group is a mere holding or investment group.

(3) *Earnings and profits.* For purposes of this paragraph (a) and paragraph (d) of this section, the following rules apply:

(i) If no member of the group is a personal holding company, the group's earnings and profits are the aggregate of the earnings and profits (or deficit) of each corporation that is a member at the close of the taxable year, determined in accordance with § 1.1502-33.

(ii) Earnings and profits resulting from the application of § 1.1502-33(b) are not taken into account.

(iii) Earnings and profits resulting from the disposition of a member's stock are determined without regard to the stock basis adjustments under §§ 1.1502-32 and 1.1502-33(c)(1).

(4) *Reasonable needs of the business.* The reasonable needs of the group's business include the reasonable needs of the business of any corporation (other than a personal holding company) that is a member at the close of the taxable year. Thus, the earnings and profits of one member may be accumulated with respect to the reasonable business needs of another member. If under § 1.537-3(b) the business of a nonmember corporation is considered the business of a member, then the earnings and profits of any member may be accumulated with respect to such nonmember's reasonable business needs.

(5) *Burden of proof.* The notification described in section 534(b) and the statement described in section 534(c) are made to or by the common parent corporation in accordance with § 1.1502-77.

(b) *Consolidated accumulated taxable income*—(1) *In general.* “Consolidated